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April 19, 2002

VIA HAND DELIVERY

Ms. Marlene N. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
Room TW-B-204
445 Twelfth Street, S.W.
Washington, D.C. 20544

REDACTED – For Public Inspection

Re: Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Jersey, WC Docket No. 02-67

Dear Ms. Dortch:

This is the cover letter for the Supplemental Reply Comments for the Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Jersey ("Supplemental Reply Comments").

These Supplemental Reply Comments contain confidential information. We are filing confidential and redacted versions of the Supplemental Reply Comments.

1. The Supplemental Reply Comments consist of (a) a stand-alone document entitled "Supplemental Reply Comments of Verizon New Jersey," and (b) supporting material.

2. Specifically, we are herewith submitting for filing:

a. One original of the portions of the Supplemental Reply Comments that contain confidential information;

b. One original of the redacted Supplemental Reply Comments;

c. Four copies of the redacted Supplemental Reply Comments; and

d. Four copies of a CD-ROM containing the redacted Supplemental Reply Comments.

3. We are also tendering to you certain copies of this letter and of portions of the Supplemental Reply Comments for date-stamping purposes. Please date-stamp and return these materials.

4. Under separate cover, we are submitting copies (redacted as appropriate) of the Supplemental Reply Comments to Ms. Janice Myles, Policy and Program Planning Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-C-327, 455 12th Street, S.W., Washington, D.C. 20544. We are also submitting copies (redacted as appropriate) to the Department of Justice, to the New Jersey Board of Public Utilities, and to Qualex (the Commission's copy contractor).

Thank you for your assistance in this matter. If you have any questions, please call me at 202-326-7930 or Steven McPherson at 703-351-3083.

Very truly yours,

Evan T. Leo

Encs.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Jersey	)	WC Docket No. 02-67

SUPPLEMENTAL REPLY COMMENTS OF VERIZON NEW JERSEY

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April 19, 2002

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INTRODUCTION AND SUMMARY

Based on its initial exhaustive review, as well as a recent supplemental proceeding, the New Jersey Board of Public Utilities "reaffirms its recommendation" that the Commission approve Verizon's Application to provide long distance service in New Jersey. BPU Comments at 1. This conclusion is obviously correct, because Verizon has taken the same extensive steps to open its local markets in New Jersey as it has taken in other states where the Commission already has found that Verizon satisfies the requirements of the Act in all respects.

The comments in this proceeding focus primarily on the wholesale rates in New Jersey, but they do not come close to making the case for rejecting the recommendation of the New Jersey BPU and denying this Application. In particular, any possible concerns about the non-recurring hot-cut rate set by the BPU have been resolved following Verizon's decision to reduce this rate to the same level that has been adopted in New York pursuant to a broad settlement agreement that more than a dozen CLECs have endorsed. While a few commenters here try to distance themselves from their previous support for the new rate, the simple fact is that the rate is below *any* reasonable measure of the cost to perform a hot cut. Accordingly, they cannot show that this rate does not comply with TELRIC.

The long distance incumbents also raise a handful of other pricing claims relating to a few isolated inputs that were part of the complex rate determinations made by the BPU. In most instances, these claims involve brand-new and fact-intensive arguments that were never raised in the original state proceeding, or that have only now been raised and are being considered by the BPU for the first time in connection with the CLECs' pending petitions for reconsideration. This is the same dilatory strategy the long distance incumbents recently attempted in Vermont, where the Commission made clear that it is "both impracticable and inappropriate" for it to make these kinds of fact-specific determinations in the first instance in a section 271 review. Moreover, most of the claims that the long distance incumbents raise here are identical to the claims they raised in Vermont, where they were rejected because they "failed to demonstrate that the [state commission] committed any clear error." Those same claims are equally flawed here, and cannot overcome the deference owed to the New Jersey BPU.

Of course, separate and apart from that fact, the rates set by the BPU also satisfy the Commission's well-established benchmark standard when compared to the rates recently adopted in New York, which the long distance incumbents themselves have argued should be the standard. Accordingly, the New Jersey rates must be affirmed for that independent reason as well.

Apart from their pricing-related claims, the commenters raise only a handful of issues that do not come close to demonstrating that Verizon's Application should be denied. For the most part, these claims simply repeat arguments that were fully refuted in the original proceeding because they improperly seek to modify Verizon's checklist offerings in ways that go beyond the requirements of the Act, raise issues that the Commission repeatedly has held should be addressed in other proceedings or has already rejected, or complain about reported results under isolated measurements on which the Commission has placed little or no weight in the past or that have been eliminated. In contrast, Verizon's performance under the key measurements this Commission has focused on in the past continues to excel — consistently reaching 95 percent or better.

The same continues to be true with respect to claims that there somehow is not enough local competition in New Jersey. In the last four months alone, competing carriers have added approximately 43,000 lines over facilities they have deployed themselves (including in all cases their own local switches) plus approximately 30,000 lines through platforms. Overall, competing carriers in New Jersey now serve some 619,000 lines, and the number continues to grow steadily. And, of course, this is all in addition to the growing number of lines and minutes that increasingly are being lost to wireless and other less traditional sources such as e-mail and instant messaging.

For all these reasons, the Commission should grant Verizon's Application expeditiously.

I. VERIZON SATISFIES THE REQUIREMENTS OF TRACK A.

Verizon demonstrated in its original Application that, both individually and collectively, competitors in New Jersey are providing service predominantly over their own facilities to both business and residential subscribers, and that Track A is therefore met. See Application at 6-10. None of the qualifying Track A carriers in New Jersey — or any other CLEC — disputed these facts in the original proceeding, and none disputes them here. See Sprint Communications Co. v. FCC, 274 F.3d 549, 562 (D.C. Cir. 2001).

Moreover, both the overall level of competition, and the level of facilities-based competition, have increased significantly since the original Application. For example, between October 2001 and February 2002, competitors added more than 43,000 lines over facilities they have deployed themselves (including in all cases their own local switches) plus approximately 30,000 lines through platforms. See Torre Supplemental Reply Decl. Att. 1 ¶ 3 & Table 1.[1] During this same period, the number of residential lines competitors are serving through facilities they have deployed themselves has increased substantially, and the number of residential lines served through platforms has more than doubled. See Torre Supplemental Reply Decl. Att. 1 ¶ 3 & Table 1.

Each of the four carriers that were providing service to residential customers at the time of Verizon's original Application using either facilities they deployed themselves or through

[1] As Verizon explained, the platform and resale totals in the Supplemental Filing reflected January data, whereas the facilities-based line totals (based on E911 listings) reflected February data. See Torre Supplemental Decl. Att. 1 ¶ 4. Since the Supplemental Filing, February platform and resale data have become available. See Torre Supplemental Reply Decl. Att. 1 ¶ 2. These data show that, between January and February, competitors added nearly 13,000 platform lines but that the number of resale lines declined by approximately 7,000. Compare id. Att. 1 ¶¶ 2-3 & Table 1 with Torre Supplemental Decl. Att. 1 ¶ 2 & Table 1. Based on the latest data, competitors added a net of 55,000 lines in New Jersey between October and February, not 50,000 as indicated in the Supplemental Filing. See id.

platforms also has increased the number of residential lines they are serving since that time. See Torre Supplemental Decl. Att. 1 ¶¶ 6-7; Torre Supplemental Reply Decl. Att. 1 ¶ 4 & Ex. 1. Based on the Commission's latest findings in the Vermont Order,[2] there can be no question that these carriers serve more than a *de minimis* number of lines, and that Track A is met. See New Jersey RPA at 3. For example, these four carriers collectively serve approximately 2,100 residential lines through facilities they have deployed themselves and through platforms. See Torre Supplemental Reply Decl. Att. 1, Ex. 1. This is substantially greater than the number of residential lines that the Commission recently found sufficient to satisfy Track A in Vermont. See Vermont Order ¶¶ 2, 11 & n.28. Moreover, the number of residential lines served individually by each of the four qualifying carriers here (Broadview, eLEC, MetTel, and Network Plus) also is greater than the number served by each of the two carriers in Vermont that the Commission found satisfied Track A on their own. See id. ¶ 11 & n.28.

II. VERIZON SATISFIES THE REQUIREMENTS OF THE COMPETITIVE CHECKLIST.

Verizon demonstrated in its original Application and its Supplemental Filing that it is providing each of the 14 checklist items in accordance with the terms of the Act and the Commission's rules, and that its performance in providing access to the various checklist items has been excellent. Based on a "thorough and comprehensive investigation," the New Jersey BPU agreed, concluding that Verizon "has met its obligations under the Act" and "recommend[ing] that the FCC grant Verizon NJ section 271 authority." BPU Report at 1, 2; see also BPU Comments at 2. After Verizon withdrew its Application and submitted its Supplemental Filing, the BPU conducted an additional proceeding "to allow interested parties to

[2] Application by Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Vermont, Memorandum Opinion and Order, CC Docket No. 02-7, FCC 02-118 (rel. Apr. 17, 2002) ("Vermont Order").

apprise the Board of their concerns." Letter from Anthony Centrella, New Jersey BPU, to Attached Service List, BPU Docket No. TE02030200 (Mar. 28, 2002). At the conclusion of this proceeding, the BPU found that "no new substantive information or arguments have been submitted that merit modification of the Board's prior Section 271 recommendation." BPU Comments at 1. Based on that finding, as well as its initial extensive investigation, the BPU "reaffirms its recommendation" that the Commission grant Verizon's Application. Id.

The DOJ likewise concluded, based on Verizon's original Application, to "recommend[] approval." DOJ Eval. at 2. In its most recent evaluation, the DOJ states that it "has not changed its generally positive assessment of the openness of the local telecommunications markets in New Jersey," and "therefore recommends that the Commission approve Verizon's second application for Section 271 authority in New Jersey." DOJ Second Eval. at 9-10.

As demonstrated below, these conclusions are obviously correct.

A. Pricing Issues.

The New Jersey BPU conducted an exhaustive 18-month pricing proceeding in which it "established TELRIC-compliant rates for UNEs" that are "the lowest rates in the Verizon region and among the lowest in the country." BPU Report at 24; see Application at 91-94; Supplemental Filing at 7. As Verizon explained in its original Application and Supplemental Filing, this determination is entitled to great deference under well-settled precedent. See Application at 94-95; Supplemental Filing at 5-7. Under the Commission's own standard, which it is bound to apply, it may reject Verizon's Application only if it finds that "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of

TELRIC principles would produce." New York Order[3] ¶ 244; see also Vermont Order ¶ 15 (same). As described below, the comments present no evidence that even remotely suggests that either of these two conditions is present here.

Non-Recurring Hot-Cut Rate. Verizon demonstrated in its Application and Supplemental Filing that the original non-recurring rate for performing a hot cut in New Jersey was calculated and established in an extensive TELRIC pricing proceeding, and that the BPU found that this rate was TELRIC-compliant. See Reply Comments at 39; Garzillo/Prosini Reply Decl. ¶¶ 18-26; Supplemental Filing at 12-13; Garzillo/Prosini Supplemental Decl. ¶¶ 17-20. In order to eliminate concerns about the BPU-approved rate as an issue, however, Verizon agreed to reduce the hot-cut rate in New Jersey to $35.00, which is the same rate that was adopted in New York pursuant to a broad settlement agreement that the New York PSC approved, and that more than a dozen CLECs endorsed. See Supplemental Filing at 15-16.[4] Even AT&T has conceded that, with this rate now in place, it may "compete aggressively across the broad spectrum of the local market . . . to compete in the short term and to invest for the long."[5]

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[3] Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, Memorandum Opinion and Order, 15 FCC Rcd 3953 (1999) ("New York Order").

[4] The fact that Verizon ultimately withdrew its original Application based on concerns over the hot-cut rate established by the BPU does not, as AT&T asserts (at 8), in any way represent a concession that these initial rates were not TELRIC-compliant, as the New Jersey BPU found. Rather, as discussed below and in the Supplemental Filing, Verizon voluntarily agreed to reduce the hot-cut rate to eliminate any conceivable issue with respect to that rate.

[5] Joint Proposal Concerning Verizon Incentive Plan at 2, attached to Proceeding on Motion of the Commission to Consider Cost Recovery by Verizon and to Investigate the Future Regulatory Framework, Order Instituting Verizon Incentive Plan, Case Nos. 00-C-1945, 98-C-1357 (NY PSC Feb. 27, 2002).

A few commenters now reverse course and disingenuously object to the new hot-cut rate that they previously agreed to in the hope of extracting still further reductions, but, as demonstrated below, their claims are without merit.

AT&T first claims (at 2, 7-9) that the new hot-cut rate has never been reviewed or approved by the New Jersey BPU (or the New York PSC), and that Verizon has failed to submit cost studies or other evidence that the rate is TELRIC-compliant. But the simple fact is that the current rate is a small fraction of what both the New Jersey and New York commissions found to be the TELRIC cost of performing a hot cut. See Supplemental Filing at 17. These findings were based on the extensive cost studies that Verizon submitted in both states. See id. at 14-15. And while some parties have suggested that these cost studies are flawed and rely on inflated work-time estimates for performing a hot cut, see, e.g., New Jersey RPA at 7, there is no merit to such claims.

As Verizon previously explained, the non-recurring cost studies in New Jersey were initially based on the studies that Verizon developed in New York over the course of several years during which the PSC stringently required Verizon to produce statistically reliable work-time estimates for performing a hot cut. See Supplemental Filing at 14-15; Garzillo/Prosini Supplemental Decl. ¶¶ 26-27. Verizon submitted cost studies in New Jersey that were comparable to those developed in New York. See Supplemental Filing at 15; Garzillo/Prosini Supplemental Decl. ¶¶ 17-20. The BPU, however, expressed concern about some of the work-time estimates used in Verizon's cost studies, and directed Verizon to change the specific estimates that were of concern and then recalculated the hot-cut rate itself to incorporate these changes. See Supplemental Filing at 15; Garzillo/Prosini Supplemental Decl. ¶¶ 19-20. The work-time estimates that the BPU ultimately used not only are what the BPU found to be reasonable, but also are comparable to, or in some instances lower than, those adopted by the New York PSC following its own extensive review of Verizon's work-time estimates. In fact, based on its own multi-year review, the PSC affirmed both that Verizon had "made a credible effort to produce a forward-looking study of its non-recurring cost," and that it had resolved "any concerns about the statistical validity of the study" supporting its work-time estimates.[6] The BPU itself likewise found that, with the modifications it had ordered, Verizon's non-recurring cost methodology was "sound, in that it makes reasonable estimates of the time currently taken for each activity."[7] And, based on the BPU-ordered changes, the hot-cut rate calculated and adopted by the BPU was even lower than the hot-cut rate adopted by the New York PSC. See Supplemental Filing at 13.

Moreover, Verizon demonstrated in its Supplemental Filing that its costs are more than $35 for just a few of the steps required to perform a hot cut, including those steps taken to ensure that CLECs are ready to accept a physical transfer of the loop in the central office. See Garzillo/Prosini Supplemental Decl. ¶¶ 21-25; Garzillo/Prosini Supplemental Reply Decl. ¶¶ 11-

[6] Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements, Recommended Decision on Module 3 Issues by Administrative Law Judge Joel A. Linsider, Case 98-C-1357, at 186, 188 (NY PSC May 16, 2001). As Verizon has explained, the non-recurring cost studies that the New York PSC ultimately used were developed under the supervision of an Administrative Law Judge over the course of several years. See Garzillo/Prosini Supplemental Decl. ¶¶ 12-14. Although the PSC expressed concerns about the time estimates used in the initial cost studies that Verizon submitted during those proceedings, it required Verizon to revise those studies, and both the ALJ and the PSC found that Verizon's revised cost studies fully addressed those earlier concerns. See id.; Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements, Order on Unbundled Network Element Rates, Case 98-C-1357, at 141 (NY PSC Jan. 28, 2002); see also Supplemental Filing at 14-15; Garzillo/Prosini Supplemental Decl. ¶¶ 13-14. And it is the time estimates in those later revised studies that are comparable to those used by the New Jersey BPU. See Garzillo/Prosini Supplemental Reply Decl. ¶ 10.

[7] Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc., Decision and Order, Docket No. TO00060356, at 162 (NJ BPU rel. Mar. 6, 2002) ("Final Order").

12, 16. And the time estimates used in this calculation are those endorsed by both the New Jersey and New York commissions. See Garzillo/Prosini Supplemental Reply Decl. ¶¶ 11-12. This further confirms that the $35 rate complies with TELRIC. Significantly, no commenter has disputed this showing. Nor has any commenter disputed Verizon's evidence demonstrating that, even if the work-time estimates adopted by the BPU are recalculated by reducing them in the ways that CLECs have argued are appropriate, the result still yields a hot-cut rate that is in excess of the current $35 rate. See Garzillo/Prosini Supplemental Decl. ¶¶ 26-29; Garzillo/Prosini Supplemental Reply Decl. ¶ 13.

Despite all this, AT&T continues to claim (at 8) that the hot-cut rate in New Jersey should be less than $5.[8] As an initial matter, AT&T's claim is inconsistent with the findings of both the New Jersey and New York commissions that the TELRIC cost of performing a hot cut is substantially higher than the amount that AT&T claims. Indeed, when AT&T presented its claim to the New Jersey BPU, the BPU found that AT&T's approach was an attempt to "assume[] away" relevant costs. See Final Order at 157. In particular, AT&T's figure is based on an imaginary automated alternative to Verizon's actual hot-cut processes, which AT&T has

[8] AT&T and Cavalier also continue to claim that the new hot-cut rate is higher than the rates in other Verizon states, but that is irrelevant. See AT&T at 8; Cavalier at 2. For one thing, the non-recurring hot-cut rates in all Verizon states other than New Jersey and New York are still based on Verizon's first generation of cost studies, not the next generation of cost studies that reflect the new hot-cut process that Verizon has implemented, often at the request of CLECs. See Supplemental Filing at 12. For another thing, the Commission repeatedly has held that there is no obligation to demonstrate that the rates in an applicant state are comparable to the lowest rates adopted in any other state. See, e.g., Vermont Order ¶ 26; Joint Application by SBC Communications Inc., et al. Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri, Memorandum Opinion and Order, 16 FCC Rcd 20719, ¶ 56 (2001) ("Arkansas/Missouri Order") (no requirement to "pass the benchmark test for each and every state that it might be compared with to show that its rates are within the reasonable range of what TELRIC would produce"); see also Application of Verizon New England Inc., et al., For Authorization to Provide In-Region, InterLATA Services in Massachusetts, Memorandum Opinion and Order, 16 FCC Rcd 8988, ¶ 28 (2001) ("Massachusetts Order").

failed to demonstrate that either Verizon or any other company could actually implement as either a technical or economic matter. See Garzillo/Prosini Supplemental Reply Decl. ¶ 14. But the Commission has held that, even under TELRIC, costs may not be based on imaginary technologies, but must instead be based on technology that is "currently available." New York Order ¶ 253. The Commission also has expressly rejected arguments that, under TELRIC, it should be assumed that a hypothetical future network would no longer require certain tasks, such as loop conditioning, that unquestionably have to be performed in the real world.[9]

AT&T and XO next complain that Verizon has not made a binding commitment to implement the new hot-cut rate. See AT&T at 11; XO at 4.[10] That is simply untrue. In a letter sent to the BPU, Verizon formally committed to keep the effective $35 rate in effect until the BPU completes its review of AT&T's pending request for reconsideration of the BPU's pricing decision, or for two years (the term of the New York settlement), whichever occurs first. See Supplemental Filing at 16; Garzillo/Prosini Supplemental Decl. ¶ 5. Moreover, the new hot-cut rate already has been incorporated into Verizon's model interconnection agreement that is available to all CLECs in New Jersey. See Garzillo/Prosini Supplemental Reply Decl. ¶ 4. And now that the new hot-cut rate already is in effect, Verizon could not unilaterally revoke it or

[9] See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, ¶ 193 (1999) ("We agree that networks built today normally should not require voice-transmission enhancing devices on loops of 18,000 feet or shorter. Nevertheless, the devices are sometimes present on such loops, and the incumbent LEC may incur costs in removing them. Thus, under our rules, the incumbent should be able to charge for conditioning such loops.") (footnote omitted).

[10] XO also claims (at 2-3) that the $35 rate does not apply to all kinds of hot cuts, but that is untrue. As Verizon's letter and accompanying rate sheet filed with the BPU make clear, the $35 rate does apply to all kinds of hot cuts. See Garzillo/Prosini Supplemental Decl. Att. 1 at 3. Different kinds of hot cuts will, however, continue to incur different supplemental charges for additional items such as an expedited order and a premises visit. See id.

change it prior to the expiration of the two-year period unless it obtained approval from the BPU to do so.

Finally, AT&T and XO complain that the $35 hot-cut rate may change in less than two years if the New Jersey BPU issues its decision on AT&T's petition for reconsideration of the BPU's pricing order. But this claim is nothing more than an attempt to have this Commission preempt the ratemaking authority of the BPU, contrary to the express terms of the Act. See 47 U.S.C. § 252(c)(2); AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366, 384 (1999). And it would be particularly inappropriate to usurp the BPU's jurisdiction here, given that it already is in the process of considering the precise issue in question, at the request of the same commenters who challenge the rate here. See, e.g., Massachusetts Order ¶ 35.[11]

Switching Rates. Like the non-recurring hot-cut rate and all other rates in New Jersey, the non-loop rates were established in an exhaustive pricing proceeding and found to be TELRIC-compliant by the New Jersey BPU. See Application at 91-94; Reply Comments at 30-31, 35-38; Supplemental Filing at 6-7. The non-loop rates in New Jersey also satisfy the Commission's well-settled benchmark test when compared to the recently adopted rates in New York. See Supplemental Filing at 10-11. The long distance incumbents nonetheless claim that the non-loop rates in New Jersey contain various TELRIC errors, and that the rates do not benchmark favorably against the New York rates, but they are wrong on both counts.

First, WorldCom repeats (at 6) its claim that, in calculating the switching rate, the BPU should have spread Verizon's switching costs over more minutes of use. As Verizon has

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[11] It also would be completely inappropriate for the Commission to require Verizon to waive its right to appeal the rates established by the BPU, or any other legal rights, as some parties have urged. See AT&T at 10; XO at 4. Just as the Commission could not require Verizon to abandon its Supreme Court challenge of the Commission's own TELRIC order, it cannot require Verizon to forego its rights to challenge an order of a state commission.

explained, however, the method the BPU adopted for allocating switching investments across usage is entirely consistent with TELRIC principles. The New Jersey BPU found that "measuring peak day traffic is an appropriate method to evaluate switch costs," and to determine "the manner in which costs should be spread among users." Final Order at 122. And, in the recent Vermont Order, this Commission upheld an approach that is identical to the one adopted by the BPU, over the same arguments and evidence that WorldCom has presented here. See Vermont Order ¶ 31 (rejecting WorldCom's claims and finding instead that "the Vermont Board committed no error with regard to this input").

The methodology adopted by the BPU is based on Verizon's cost study, which calculates switching costs by determining the switching investment required to establish capacity necessary to accommodate traffic during peak periods, and then spreading that investment across *all* annual minutes of use in the switch. See Garzillo/Prosini Supplemental Reply Decl. ¶ 30. Verizon estimates annual usage first by computing the ratio of usage during a busy hour on a busy day to usage during the rest of that day (*i.e.*, the Busy Hour to Day Ratio ("BHDR")), and then dividing that figure by 251 days to calculate the ratio of usage during a busy hour to usage during the rest of the year (*i.e.*, the Busy Hour to Annual Ratio ("BHAR")). See id. ¶¶ 31-33. The BHAR is then multiplied by the per-line switching costs during peak periods (as opposed to the costs during average periods) to derive the annual per-minute switching cost. See id. ¶ 33. This methodology recognizes that, although switch investment must be calculated based on usage during peak periods, the expected average usage during the course of the year necessarily will be lower. See id. ¶ 34. It does not, however, mean that the cost calculation assumes the switch is used *only* during peak periods or that usage during other periods is ignored. See id. ¶ 35.

The long distance incumbents, in contrast, have argued that Verizon should calculate the BHAR by dividing the BHDR by the total number of days in the year — 365 — to determine annual usage. But this approach makes no sense unless one assumes that usage in the *busy* day is representative of usage on *every* day of the year. That obviously is not the case. Because Verizon does *not* experience the same busy-hour usage throughout the year, this approach dramatically *overestimates* the number of minutes of use per year and drastically *underestimates* Verizon's per-minute switching costs. In fact, mathematically, this approach is bound to result in under-recovery, because 365 times the usage in the busy day will *always* result in an estimate that exceeds actual annual usage so long as there is even *one day* on which usage falls below usage on that day.

WorldCom is therefore wrong to claim (at 7) that Verizon's approach of dividing the BHDR by 251, as opposed to 365, "leaves out usage on weekends and holidays, even though Verizon charges CLECs for weekend and holiday usage." Verizon's methodology *does* account for weekend and holiday traffic because the BHAR is multiplied against a figure representing the busy hour during a busy season, rather than an average business day. See Garzillo/Prosini Supplemental Reply Decl. ¶ 34. By using 251 as the divisor — which equates to all business days, even though not all business days experience peak usage — Verizon is accounting for traffic on weekends and holidays. See id. ¶¶ 34-35. Indeed, WorldCom itself previously recognized that 365 is the wrong divisor, claiming (at 6) that, as an alternative, the calculation should be done using 308 days — the figure recently adopted by the New York PSC. According to WorldCom, this approach would treat weekend days as half days, on the assumption that traffic volumes on weekend days are half those on business days. But what WorldCom does not point out is that the effect of its proposal is to assume that *every* business day experiences traffic volumes that are equal to the traffic in a *busy* day — which they obviously are not — and to then add weekend volumes on top of that inflated weekday total. As WorldCom's own description makes clear, the result is to substantially overstate weekday usage volumes. AT&T's own cost studies, which previously have used numbers of 264 or 270 days — figures that obviously are *less than* 308 and closer to 251 — acknowledge this same fact. See Garzillo/Prosini Supplemental Reply Decl. ¶ 38.

WorldCom also is wide of the mark in claiming (at 6-7) that, in its review of Verizon's confidential data, it has uncovered supposedly "new information" that shows Verizon can and does measure weekend and holiday usage, and that the New Jersey switching rate is therefore unreasonable. As an initial matter, the premise of WorldCom's argument — that Verizon does not measure weekend and holiday usage in the local switching rate — is flawed, as demonstrated above. Moreover, WorldCom concedes that the cost data to which it refers bear no relation to unbundled local switching, but instead relate to studies of trunk usage in connection with common transport and tandem switching. As one would expect, these cost studies are different from the studies used for end-office switches. For example, whereas the switching study extrapolates usage in a busy hour and a busy day to calculate total annual minutes of use, the trunking study cited by WorldCom relies on an *average* usage figure. See Garzillo/Prosini Supplemental Reply Decl. ¶ 37.

In any event, busy hour annualization is precisely the type of issue that should be decided in the first instance by state commissions. The New Jersey BPU has approved Verizon's busy hour assumptions, as have other state commissions, and this Commission. See Vermont Order ¶ 31. While there may well be a range of reasonable figures that states could use, the choice of the "right" number within that range — whether the 251 days adopted by the BPU or the 264- or

274-day figures used by AT&T — is clearly a fact-specific and state-specific determination for the state commissions to decide. And, of course, the BPU's decision to rely on the 251-day figure is within just a few days of the figures the long distance incumbents themselves have used in the past. The BPU's conclusions may differ from the New York PSC's, or another state commission's, just as different state may come to differing conclusions regarding other inputs such as the cost of capital or fill factors, but that is well within the bounds of the task assigned to them under the Commission's TELRIC rules, and in no way renders New Jersey ineligible for section 271 approval. To the contrary, this is precisely the kind of inherently fact-bound issue that requires the expert judgment of the state commission, particularly "[g]iven the 90-day statutory deadline to reach a decision on a section 271 application." New York Order ¶ 51. Moreover, deferring to the state commission is particularly appropriate under the circumstances here, given that the precise issue in dispute already is the subject of a reconsideration proceeding that is now pending before the New Jersey BPU.

Second, WorldCom repeats (at 8) its claim that the BPU improperly permits Verizon to charge for both originating and terminating minutes on an intra-switch call. But the Commission has upheld this same approach in Pennsylvania, Rhode Island, and, most recently, in Vermont. See Reply Comments at 37 & n.30; Pennsylvania Order ¶¶ 60-61; Vermont Order ¶ 32. In fact, WorldCom makes the very same arguments here that it made in Vermont, where the Commission held that "WorldCom has made no demonstration that the Vermont Board committed clear error when it allowed Verizon to charge for originating and terminating minutes of use on intraswitch calls." Vermont Order ¶ 32. Moreover, as Verizon explained in the original proceeding, this issue is currently pending before the BPU, as a result of WorldCom's own request for reconsideration of the BPU's ruling. See Garzillo/Prosini Reply Decl. ¶ 9. In any event, it is clearly appropriate for Verizon to charge for both originating and terminating minutes on an intra-switch call because Verizon incurs separate costs for both originating and terminating functions, regardless of whether those separate functions are performed by one switch or two. See Garzillo/Prosini Supplemental Reply Decl. ¶ 19. And while the New Jersey BPU has decided to permit recovery of the costs for these different functions as separate originating and terminating charges, rather than combining them into a single charge, this is a matter of rate design on which the BPU is owed great deference.

Third, AT&T and WorldCom repeat their claim that it is improper to include the cost for vertical features in the switching usage rate, rather than in the port rate. See AT&T at 14-15; WorldCom at 9. Although they have appeared to concede that their previous basis for this claim — that the BPU's approach leads to double recovery because the port charge already includes the costs of vertical features — is false, see Reply Comments at 36, they now argue that the BPU's decision is misguided because the cost of vertical features does not vary by usage, see WorldCom at 8. That claim too is wrong, and, as the BPU has explained, also beside the point. As a factual matter, the costs of vertical features *are* usage sensitive because these features are performed by switch processors that are "sized" based on the anticipated usage of that processor, including usage associated with performing vertical features. See Garzillo/Prosini Supplemental Reply Decl. ¶¶ 25-26.

In any event, the BPU has found that the question whether it is appropriate to recover the costs of vertical features through usage sensitive charges or through the port charges also is purely a "matter of rate design," with the ultimate goal of each approach being "to ensure that costs are properly recovered." Final Order at 124, 125. The BPU found that its approach would not only achieve that goal, but also that it was "reasonable and . . . consistent with the Board's previous rate design." Id. at 125. The BPU also recognized that there were trade-offs in either approach, and that the one it chose would tend to "benefit" CLECs where their "customer is a low or moderate usage customer," and that it also would "encourage[]" carriers "to evaluate the feasibility of deploying their own switches." Id. at 124-25.

It is therefore absurd for the long distance incumbents to complain that the BPU's decision is somehow improper because it is based on a "policy judgment," given that the Act explicitly grants the BPU precisely such discretion, and that the BPU properly exercised that discretion here by adopting rates that, first and foremost, were based on whether they would permit Verizon to recover the proper amount of costs. There is accordingly no basis for this Commission to second-guess that determination.

Finally, even if the Commission were to conclude that the BPU did not follow TELRIC principles in every respect, the New Jersey switching rates still fall within the range that a reasonable application of TELRIC principles would produce. The current unbundled switching rates in New Jersey satisfy a benchmark comparison to the rates recently adopted in New York, when the non-loop rates in both states are taken as a whole. Of course, the Commission repeatedly has held that, in performing a benchmark comparison, it is appropriate to compare non-loop rates as a whole. See, e.g., Massachusetts Order ¶ 25; Pennsylvania Order ¶ 67 n.252; Rhode Island Order[12] ¶ 40 n.108. Consistent with this precedent, Verizon demonstrated in its Supplemental Filing that the statewide average aggregate costs for switching usage, a switching port, transport, and signaling — based on actual state-specific dial equipment minutes (from ARMIS) — are higher than the costs in New York, while the statewide average aggregate rates

[12] Application by Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Rhode Island, Memorandum Opinion and Order, CC Docket No. 01-324, FCC 02-63 (rel. Feb. 22, 2002) ("Rhode Island Order").

for these items are lower than rates in the New York. See Supplemental Filing at 11; Garzillo/Prosini Supplemental Decl. ¶¶ 33-34. Verizon also explained that, although the non-loop rates individually satisfy a benchmark comparison with the New York rates, the Commission can take additional comfort from the fact that the combined loop and non-loop rates set by the New Jersey BPU are substantially lower (24 percent relative to cost) than the newly established New York rates. See Supplemental Filing at 11.

AT&T and WorldCom first argue that the use of a benchmark analysis of non-loop rates is inappropriate, and that the Commission is required instead to perform an individual TELRIC analysis of each non-loop element. See WorldCom at 1; AT&T at 16-17. But the Act contains no such requirement. All that the checklist requires is that unbundled elements be provided "in accordance with section 252(d)(1)" — the very provision that assigns state commissions the task of setting individual rates. This Commission has made clear that its role in the section 271 context is not to set particular rates (a task assigned to the states), but rather is to assure itself generally that "basic TELRIC principles [have not been] violated" and that "the state commission" has made no "clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce." Vermont Order ¶ 15. As the D.C. Circuit has recently made clear, "[w]hen the Commission adjudicates § 271 applications, it does not — *and cannot* — conduct de novo review of state rate-setting determinations. Instead, it makes a general assessment of compliance with TELRIC principles."[13] Since the Commission's role is to determine whether the rates

[13] Sprint, 274 F.3d at 556 (emphasis added); see also AT&T Corp. v. FCC, 220 F.3d 607, 615 (D.C. Cir. 2000) ("The FCC does not conduct de novo review of state pricing determinations in section 271 proceedings, nor does it adjust rates to conform with TELRIC. It addresses only whether those rates comply with basic TELRIC principles."); New York Order ¶ 244; Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of

generally fall within "the range that the reasonable application of TELRIC principles would produce" — and the rates at issue are only paid in combination as part of a UNE-Platform arrangement — it is appropriate for the Commission to determine whether the price of all the non-loop rates taken together (or of an entire UNE Platform) fall within that range.

In fact, this approach is no different from the approach the FCC has already adopted with respect to Verizon's checklist performance in previous section 271 proceedings. For example, the Commission has concluded that its analysis of checklist item 4 "cannot focus on [Verizon's] performance with respect to any single metric or any single type of loop." Instead, the Commission will "examine the performance data for all of the various loop metrics, as well as the factors surrounding those metrics, in order to obtain a comprehensive picture of whether [Verizon] is providing unbundled local loops in accordance with the requirements of checklist item 4." New York Order ¶ 278; see also Rhode Island Order ¶ 88 ("[G]iven Verizon's generally acceptable performance for all other categories of loops, and recognizing that high capacity loops represent only a small percentage of overall loop orders in Rhode Island . . . we find that Verizon's performance is in compliance with checklist item four."); Connecticut Order[14] ¶ 26 ("Given the totality of the evidence, we find that Verizon's performance for high capacity loops complies with checklist item 4."). Just as it looks at Verizon's "overall" performance on its metrics to obtain a "comprehensive picture," so too may it look at UNE rates overall (that is, total non-loop rates, or combined loop and non-loop rates) to determine that

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1934, as amended, To Provide In-Region, InterLATA Services In Michigan, Memorandum Opinion and Order, 12 FCC Rcd 20543, ¶¶ 288, 290 (1997).

[14] Application of Verizon New York Inc., et al., For Authorization to Provide In-Region, InterLATA Services in Connecticut, Memorandum Opinion and Order, 16 FCC Rcd 14147 (2001) ("Connecticut Order").

those rates fall within — and in this case *well* within — the range of rates that a reasonable application of TELRIC would produce.

Indeed, AT&T and WorldCom have argued both here and in other section 271 proceedings that the only proper analysis of UNE rates is one that looks at rates on a combined basis. AT&T states in its comments here, for example, that "the whole purpose of unbundling is to allow an entrant to purchase — at cost-based rates — only the elements necessary to implement its particular entry strategy." AT&T at 16. And given that carriers invariably purchase all non-loop elements together — and, in fact, invariably purchase non-loop elements together with loops — it is entirely appropriate for the Commission to analyze the rates for certain elements only on a combined basis. The long distance incumbents themselves also have repeatedly argued that the Commission is required to consider the overall rates for a UNE platform. And they have gone so far as to argue that, absent a demonstration that the combined rates permit "profitable entry," the Commission may not find that such rates satisfy the checklist.[15] While AT&T's legal and factual assertions regarding the platform rates in New Jersey are misplaced, the factual underpinning of its claim is that, because carriers purchase elements on a combined basis (*e.g.*, as a preassembled platform), the Commission should consider the combined rates for such elements in determining whether they meet the checklist. Although this logic may no longer suit AT&T's purposes, the Commission has previously

[15] See, e.g., AT&T Comments, CC Docket No. 02-7, at 17 (FCC filed Feb. 6, 2002) ("Further confirmation that Verizon's Vermont rates [v]iolate Checklist Item 2 is the fact that those rates preclude profitable residential local UNE-platform entry in Vermont.").